

**CITY OF NEWPORT BEACH PLANNING COMMISSION MINUTES**  
**Council Chambers – 100 Civic Center Drive**  
**Thursday, September 5, 2013**  
**REGULAR MEETING**  
**6:30 p.m.**

**I. CALL TO ORDER** - The meeting was called to order at 6:30 p.m.

**II. PLEDGE OF ALLEGIANCE** – Commissioner Brown

**III. ROLL CALL**

PRESENT: Ameri, Brown, Hillgren, Kramer, Lawler, Myers, and Tucker

ABSENT: Ameri (arrived at 6:33 p.m.)

Staff Present: Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Marlene Burns, Administrative Assistant; Tony Brine, City Traffic Engineer; and James Campbell, Principal Planner

**IV. PUBLIC COMMENTS**

Chair Hillgren invited those interested in addressing the Planning Commission to do so at this time. There being no response, Chair Hillgren closed the Public Comments portion of the meeting.

**V. REQUEST FOR CONTINUANCES**

Deputy Community Development Director Brenda Wisneski requested a continuance of Item No. 4, Newport Harbor Yacht Club (PA2012-091), to a date uncertain.

**Motion** made by Vice Chair Tucker and seconded by Commissioner Brown and carried (6 – 0), to continue Item No. 4 on the agenda, to a date uncertain.

AYES: Brown, Hillgren, Kramer, Lawler, Myers, and Tucker

NOES: None

ABSENT: Ameri

Commissioner Ameri arrived at this juncture (6:33 p.m.)

**VI. CONSENT ITEMS**

**ITEM NO. 1 MINUTES OF AUGUST 22, 2013**

Chair Hillgren noted corrections submitted by him and Mr. Jim Mosher, a member of the public.

Interested parties were invited to address the Planning Commission on this item, there was no response and Chair Hillgren closed public comments for this item.

**Motion** made by Vice Chair Tucker and seconded by Commissioner Brown and carried (7 – 0), to approve the Minutes of the Planning Commission meeting of August 22, 2013, as corrected, as file.

AYES: Ameri, Brown, Hillgren, Kramer, Lawler, Myers, and Tucker

NOES: None

**VII. PUBLIC HEARING ITEMS****ITEM NO. 2     UPTOWN NEWPORT MSDR (PA2013-129)**  
**Site Location:** 4311-4321 Jamboree Road

Commissioner Lawler reported a business interest with a property located near the subject property and requested being excused and the request was granted. He departed the chambers at this time.

Associate Planner Rosalinh Ung presented background of the item noting that the Commission continued the matter from its last meeting and directed the applicant to make changes to the architectural elements of the project including enhancing the main entry at Jamboree Road and Fairchild to be more iconic, redesign Building 2 so it has less of an "institutional" architectural theme by using more high-quality finish material and require the applicant to use enhanced material/finish (i.e., stone, tile, limestone plaster, and fiber cement panel), and remove smooth plaster as a part of enhanced materials/finish list and replace it with "or similar enhanced quality materials approved by the Community Development Director" as noted in the architectural drawings. She reported that the changes were made and the revised plans were provided to the Commission and made available to the general public. She stated that the staff report includes a link to the applicable zoning documents and design guidelines. She deferred to the applicant for a brief presentation of the changes made.

Chair Hillgren opened the Public Hearing.

Bill Shopoff, The Shopoff Group, introduced members of his team and thanked staff and the Planning Commission for their efforts in bringing the project forward, noting that it has been an extremely collaborative effort. He reported that the suggestions of the Commission have been incorporated into the revised plans and listed the next steps for the project, pending approval by the Commission.

Ken Nilmeier, MVE Architects, provided a PowerPoint presentation and highlighted the changes made to the plans. He addressed proposed modifications to Building 1 and the use of enhanced materials, elevations, proposed enhancements to the main entry, focal points, the tower element, modifications to building massing, and addition of vertical enhanced materials. He then addressed the proposed modifications to Building 2, efforts at avoiding an "institutional" look, changes in the color palette and use of enhanced materials.

Vice Chair Tucker addressed the tower element at Jamboree and Fairchild noting that he preferred the original tower element with enhanced materials and wondered if changes can be made to revert back to the original tower element.

Mr. Nilmeier reported that would be possible per the Commission's direction to include the previous concept for the tower, using enhanced materials.

Vice Chair Tucker confirmed that the list of enhanced materials would apply to wherever the reference to enhanced materials appears on the plans. He commented on the modifications to Building 2 and Building 1, except for the tower element, wherein he would prefer the original concept using enhanced materials.

Mr. Shopoff indicated he preferred the original tower element concept, but would accept the second concept as well.

Chair Hillgren invited members of the public interested in addressing the Commission on this matter, to do so at this time.

Jim Mosher thanked staff for making the planning documents available to the public. He addressed the circulation pattern and stressed that it appears that in ratifying the site review, the Commission will be ratifying a new subdivision of the lots within the parcel, per the Zoning Administrator's decision. He referenced the northern entrance to Jamboree noting that it could be in different hands than the rest of the Phase 1 development. He hoped that the Commission would offer clarification on the impacts of that decision.

Chair Hillgren noted that master control is required for the entrances and that there is a contingency that one phase support the other.

There being no others wishing to address the Commission, Chair Hillgren closed the Public Hearing.

Vice Chair Tucker noted that Secretary Kramer had suggested modifications to the tower element and wondered regarding his thoughts on the revised concept.

Secretary Kramer reported that he is satisfied with the new design created by the applicant for the tower element and that it serves to enhance the project.

Vice Chair Tucker noted his support of the motion and clarified it would include the list of enhanced materials wherever reference to it is made.

Chair Hillgren stated he concurs with Vice Chair Tucker, but felt that the ultimate developer should be allowed flexibility.

**Motion** made by Secretary Kramer and seconded by Commissioner Ameri to adopt Resolution No. (INSERT RESO NUMBER), finding that all environmental effects of the Uptown Newport Planned Community have been previously addressed by the certification of Environmental Impact Report No. ER2012-001 (SCH No. 2010051094) and approving Master Site Development Review No. SD2013-002 with the changes submitted by the applicant.

**Amended Motion** made by Secretary Kramer and seconded by Commissioner Ameri and carried (6 – 1), to adopt a resolution , finding that all environmental effects of the Uptown Newport Planned Community have been previously addressed by the certification of Environmental Impact Report No. ER2012-001 (SCH No. 2010051094) and approving Master Site Development Review No. SD2013-002 with the changes submitted by the applicant and allowing the developer flexibility related to the choice of design concepts as original proposed including the alternative design for the tower element.

AYES:	Ameri, Brown, Hillgren, Kramer, Myers, and Tucker
NOES:	None
RECUSED:	Lawler

Commissioner Lawler returned to the Chambers and took his place on the dais.

**ITEM NO. 3 LIDO VILLAS (PA2012-146)**  
**Site Location:** 3303 and 3355 Via Lido

Assistant Planner Makana Nova presented details of the report noting that questions from the Commission during a previous meeting have been addressed in the report. She stated that at this time, the applicant will provide a presentation on the project.

Chair Hillgren opened the Public Hearing and invited the applicant forward for a presentation.

Steve Mills, Dart Development, the applicant, thanked the Commission for considering the project, introduced his partner and deferred to the architect for a presentation.

Robin Donaldson of Shubin and Donaldson Architects, project architect, provided a PowerPoint presentation, noting that staff has done a great job addressing the planning issues at the prior Planning Commission meeting. He introduced David Larkins, Landscape Architect, who will provide information regarding the landscape plans. He commented on the spirit of the architecture, the inspiration behind the project and using the Lido Village Design Guidelines. He commented on the uniqueness and historical context of the area. He highlighted key points within the Guidelines that helped direct the project including identification of conditions around the site. He addressed location, site boundaries, street-focused edges, opportunities for open space/focal point, open space network and pedestrian connections, the site plan and ADA accessibility.

David Larkins, LRM Landscape Architecture, presented details of the landscape plan addressing the location of nodes as identified by the Lido Village Design Guidelines, types of proposed trees, use of drought-tolerant plants, pedestrian circulation, and enhanced pavement, inclusion of a water feature, and the integration of walk-ups to the residential units from the surrounding streets.

Mr. Donaldson referenced the Guidelines and noted that each unit has its identity to the street and he discussed parking, service circulation, architectural design, materials and colors, examples of the various units, elevations and the existing commercial building on the property.

Chair Hillgren invited members of the public interested in addressing the Commission on this matter, to do so at this time.

Jim Mosher referenced written comments he submitted previously and recommended that the Commission review the Zoning Code in terms of the minimum site area required and the purpose for planned community districts prior to recommending approval of the proposed Planned Community District. He opined that the proposal does not meet the Zoning Code as it is not a diversified development but rather monolithic and of a single-use. He expressed concerns with the proposed height noting that it is a deviation from Coastal Commission requirements based on comments submitted by the California Coastal Commission. He commented on the architecture noting that it includes façades dominated by balconies which has been shown as an example of bad architecture in the design guidelines for the previous item.

Chair Hillgren wondered regarding allowing variations to the setbacks and the intent of the street front at the ground plane noting that it may provide opportunities for additional landscape. In response to his inquiry, Mr. Donaldson reported that there was no guidance in the Guidelines about residential buildings addressing the street. He stated that there was an interest in having a presence on the street and decided on allowing residential use as well as pedestrian use. He reported having flexibility to make the area bigger for residents.

Chair Hillgren felt that the proposed hardscape will not be very functional for residents. He stated he would like to see flexibility for the developer to work with staff to come up with a program that works for Lido Village as well as the ultimate users of the project.

In terms of the height, Chair Hillgren felt that the project would be better served if it had more height and addressed the possibility of creating more space on the ground plane. Mr. Donaldson indicated they would be happy to have extra height.

Commissioner Lawler inquired regarding sustainability measures and Mr. Donaldson reported that the project will be subject to all of the Cal Green regulations and will have enhanced, energy-saving and sustainable features such as tankless water heaters, permeable pavers, and water-efficient landscaping. He added they are not pursuing a LEED certified project, but the project will be a resource-efficient project.

Secretary Kramer commended the applicant for the project but wondered if it is right for Lido Village.

Members of the Planning Commission reviewed the material board for the project.

There being no others wishing to address the Commission, Chair Hillgren closed the Public Hearing.

Ms. Nova reported that the Planning Commission would be making a recommendation to City Council for the applications listed including adoption of the Mitigated Negative Declaration and approval of actions listed.

Secretary Kramer inquired regarding maintenance of the proposed glass features and issues voiced by Mr. Mosher.

Principal Planner, Jim Campbell, reported that in terms of the adoption of the Planned Community Text, the Zoning Code establishes a ten acre limit for urbanized areas and specifies a diversification of uses and that in relation to this project, the applicant is asking for a waiver. Staff has viewed the request considering the broader context of Lido Village as a whole and as described in the Design Guidelines. He added that the Planned Community Text allows for flexibility in establishing standards that are more appropriate for the

urban site. Regarding height, Mr. Campbell noted that the Coastal Commission is reviewing maintaining the height limitation at thirty-five (35) feet, and that the City's height limits have the ability to have a five-foot exception for sloping roofs, architectural features, stair wells and elevator shafts and that the project proposes flat roofs. Mr. Campbell indicated that he shares Mr. Mosher's concerns regarding the Coastal Commission's approval of building heights beyond thirty-five (35) feet. He stated that the architectural features above thirty-five (35) feet could be cut off by the Coastal Commission.

Secretary Kramer stated he shares Chair Hillgren's desire to increase the height of the project and asked that the applicant address the height issue as well as maintenance of glass features.

Mr. Campbell cautioned that the MND is predicated on the specific design presented. Any recommendation for increased height may be seen by the Coastal Commission as too tall. He stated he feels comfortable from the local perspective that since the City has been historically consistent in allowing these types of limited architectural exceptions that it is consistent with the Coastal Land-Use Policy, given the City's historical interpretation of height limits.

Assistant City Attorney Leonie Mulvihill identified that the PC-Text has a minimum acreage requirement, but clarified that the ordinance has an express ability for Council to waive it. The ordinance contemplates that there would be projects or communities that might merit a waiver.

In response to Commissioner Ameri's inquiry regarding guest parking, Ms. Nova reported that twelve guest spaces are required and twelve are provided. She added that the applicant has worked extensively with the Public Works Department to provide sufficient access to the minimum number of guest spaces and to the garage spaces.

Commissioner Ameri expressed concerns regarding the architecture stating that to him, it has the look of a glorified motel. He acknowledged the Design Guidelines and related limitations but suggested there may be another design that would avoid the "motel" look resulting from the continuous balconies along the front elevations.

Vice Chair Tucker referenced written comments he submitted regarding CEQA. He agreed with Chair Hillgren regarding landscape materials and indicated he is not crazy about the architecture but acknowledged the need to follow the Guidelines which, in this case, were not developed by the Planning Commission. He noted that the applicant is entitled to do what he intends to do. He expressed concerns regarding maintenance of the project over an extended period of time but commented positively that the units are large. Maintenance will be addressed through the conditions and CC&Rs and his suggestion that the City be made a third-party beneficiary under those documents with a right to enforce the CC&Rs, without the duty to enforce the CC&Rs, has been incorporated.

Commissioner Brown commented positively on the project including the pass-through for pedestrians, parking and the use of pavers rather than concrete and the color palette and stated that while he feels neutral regarding the architecture, the Commission is not in a position to impose what it thinks the architecture should be, provided it is consistent with the Guidelines. He commented positively on the staggered setbacks and indicated he would support increasing the height of the first floor level if there were some ways of minimizing the risk in terms of consideration by the Coastal Commission. He addressed the layout of the units, the glass façade facing the water, changes in the unit type throughout the site, and indicated support for the project.

In response to an inquiry from Chair Hillgren asking if the group that developed the Design Guidelines for this project was noticed for this project, Ms. Nova reported that no special notice was provided, other than the required 300-foot radius surrounding the project site and that no additional public comments have been received since the prior Planning Commission meeting other than those from Mr. Mosher.

Chair Hillgren commented positively on parking and expressed concerns regarding the Master Plan for the area and opportunities for bicycle paths/stripping.

City Traffic Engineer Tony Brine reported there is no specific bicycle plan in place for Lido Village. However, the City just started the development of a City-wide Bicycle Master Plan, which would include this area.

It was noted that the project involves changing the driveway access and there will be a relocation of three parking spaces along two of the streets, which will result in no net change to the number of street parking spaces, which will remain designated and metered.

Discussion followed, inquiring if the last Planning Commission meeting where this project was discussed was considered a Public Hearing. It was noted that the Public Hearing was not opened at the prior meeting so it would qualify as a public or informational meeting and not a hearing.

Chair Hillgren commented on the architecture and the importance of the quality of material, landscaping and a coastal landscape palette. He addressed common living areas and the water feature and the importance of proper maintenance. Rather than the proposed fountain, which can be challenging in terms of maintenance, he suggested adding landscaping at the corner as well as seating areas. He addressed the expiration and staff clarified that twenty-four months would be from the time of Coastal Commission approval. Regarding notification of future potential owners regarding the development conditions of approval, and whether that would be appropriate for condominiums, Ms. Mulvihill stated that notification regarding the CC&Rs would be more appropriate than development conditions of approval.

Discussion followed regarding the minimum clearance and compliance with community noise controls as applicable to adjacent land uses. It was noted that compliance with the City's Noise Ordinance is necessary and applicable. The standard condition regarding community noise controls could be deleted and Chair Hillgren directed staff to do so.

Chair Hillgren identified necessary changes or corrections to the draft resolution and verified sections related to water meter and sewer clean up and maintenance of on-street parking spaces during initial development. Mr. Campbell suggested removing the latter condition of approval since the applicant is not responsible to maintain parking in the public right-of-way. Chair Hillgren commented regarding the maintenance of common landscape areas and felt that the future Homeowners Association should be responsible for maintaining all landscape areas.

Ms. Mulvihill reported that in a condominium project there will generally be private landscape areas and common landscape areas which is what the condition is speaking to. She suggested that the applicant clarify the issue.

In response to Chair Hillgren's inquiry, Ms. Mulvihill stated that a condition could be added to require the street frontage areas to be identified as common areas so that the Homeowners Association would maintain it for a consistent look around the project.

Chair Hillgren inquired regarding permitted uses in terms of short-term lodging and adult daycare and Ms. Nova explained that this section was modified to mirror the RM permitted use Standards of the Zoning Code.

Mr. Campbell stated the Commission may consider prohibiting short-term lodging if it so desires as the project is similar to other single-family areas that currently do not have the privilege to accommodate short-term lodging.

Discussion followed regarding the adult day care use, constraints regarding concentration and the possibility of limiting the number, overall. It was noted that when the PC-Text is silent, the Zoning Code sections would apply. Flexibility is provided in the prohibited uses, allowing for the interpretation of the Zoning Code provision to be applied.

Ms. Mulvihill clarified the matter of permitted and prohibited uses and discretion by the Community Development Director to consider uses that are similar to permitted uses and whether or not they are explicitly listed. If a PC-Text is silent, the applicable Zoning Code provisions would apply.

Vice Chair Tucker suggested listing permitted uses and indicating that everything else is prohibited. Regarding CEQA, he reported receiving a letter from Robert Hawkins and noted that staff addressed the issues he raised at the previous Planning Commission meeting and that the document prepared for the project, adequately addressed the cumulative impacts of the project. He noted references to the Santa Ana Unified School District and Measure G in Condition No. 85 and suggested they should be replaced by the

Newport-Mesa School District. Regarding a reference to a Master Association and Sub-Association in Condition No. 86a, he noted that this should be one association taking into account the size of the project. He suggested changing Condition No. 86i to 86j and insert as 86i as condition as follows: "A provision that the garage parking spaces shall be used only for parking of operational vehicles and not for storage". In addition, he suggested changing Condition No. 86b to state: "A provision that the architecture and exterior building materials of the dwelling units shall be maintained in a quality, color and type so the appearance is consistent with the original project as developed".

Chair Hillgren invited the applicant to address the Commission.

Mr. Donaldson stated that they take exception to the suggested modification to Condition No. 86i regarding storage within private parking garages.

Steve Mills, Dart Development, wondered if restricting visitor parking to visitors and resident parking to residents rather than specifically prohibiting storage in the garage would be appropriate, taking into account the possibility that a resident may not own a car.

Vice Chair Tucker didn't believe so, noting that it is important that parking spaces be available for parking and Chair Hillgren agreed, adding that it is important to ensure that parking spaces are used for parking.

Commissioner Myers agreed, adding that he believes the project is under-parked. He felt that effort could have been made to provide surface parking for visitors in the inner area. He stated that residents will use visitor parking for convenience and that using garages for storage will add to the parking load.

Chair Hillgren asked the applicant to identify common and private areas.

Mr. Donaldson stated that due to the configuration and importance of landscape along the street, there are no areas in the hardscape and landscape that are not considered common areas. So, that, in terms of maintenance, it's all common area. He expressed confidence in the ability to maintain the architectural materials.

Regarding the issue of height, Mr. Donaldson, confirmed that the height is measured from the existing grade and suggested stepping the side slightly and stated that in terms of risk, the first priority is the quality of the project and requested flexibility to pursue the matter.

Discussion followed regarding minimizing allowable uses to "condominium and recreational".

Regarding permitted and prohibited uses within the PC-Text, Ms. Nova suggested keeping A-C and removing the rest of the text.

Ms. Mulvihill suggested that given that current State law allows some uses such as childcare and adult care to be allowed, language be added that has land uses not listed above, are not allowed except as provided by Chapter 20.12 of the Zoning Code or required by State law.

Secretary Kramer confirmed that the suggested language be added and asked the applicant to work with staff to discuss the possibility of changing the height.

Vice Chair Tucker asked for added language to give flexibility to the applicant to use landscaping rather than a fountain, depending on the final design and that they work with staff to develop a landscape palette to accentuate the coastal architecture and flexibility on the design at the ground plane to be able to have a more robust landscaped edge along the street and make the ground plane landscape as functional as possible for residents.

Mr. Campbell addressed the issue of height and reported that the particular PC-Text is specific regarding the height and suggested limiting the height to five (5) feet above thirty-five (35) feet.

Chair Hillgren suggested specific limitations for the height of the roof top (33'10"), architectural projection (40') and the guard rail (37'4").

Ms. Mulvihill reported that the Coastal Land Use Plan has a height limit of thirty-five (35) feet which staff has always applied with flexibility allowed for the architectural design, which is what is being proposed, therefore, being consistent with the Coastal Land Use Plan.

Brief discussion followed regarding the Mitigated Negative Declaration.

Jeremy Harding, CMB Planning, City Environmental Consultant, stated that one of the rules of CEQA provides for a public disclosure document and during the MND review period, a specific height was listed and to raise the height following public review could be construed as denying the public a meaningful opportunity to make comments on the project regarding aesthetic impacts.

Ms. Mulvihill reported that if there is a desire of the Commission to change the project, the recommendation would be to re-circulate the MND to allow the public to comment. If no changes are proposed, the Commission would proceed approving as proposed.

Vice Chair Tucker noted that the project is within the Guidelines and did not recommend recirculation of the MND.

Ms. Mulvihill added that they would have the ability to approach this issue with Coastal Commission staff.

Chair Hillgren withdrew his suggestions regarding height.

Mr. Campbell referenced Condition No. 58 and made a modification regarding relocation of proposed accent palms in order to provide site distance around the corner for vehicles.

Commissioner Ameri suggested that the applicant reconsider the building façades and for staff to develop ideas for a softer look.

**Motion** made by Secretary Kramer and seconded by Commissioner Lawler and carried (7 – 0), recommending City Council adopt Mitigated Negative Declaration No. ND2013-001; approve General Plan Amendment No. GP2012-005; approve Local Coastal Plan Amendment No. LC2013-001; approve Code Amendment No. CA2012-008; approve Site Development Review No. SR2013-001; and approve Tract Map No. NT2013-001 (Tentative Tract Map No. 17555), as discussed and amended above.

AYES: Ameri, Brown, Hillgren, Kramer, Lawler, Myers, and Tucker

NOES: None

**ITEM NO. 4 NEWPORT HARBOR YACHT CLUB (PA2012-091)**

**Site Location:** 720 West Bay Avenue, 800 West Bay Avenue, 711-721 West Bay Avenue, and 710-720 West Balboa Boulevard

The aforementioned item was continued to a date uncertain under Requests for Continuances.

**ITEM NO. 5 WOODY'S WHARF USE PERMIT (PA2011-055)**

**Site Location:** 2318 Newport Boulevard

Deputy Community Development Director Brenda Wisneski provided a description of the project and addressed background; prior actions by the Planning Commission, appeal by the applicant to Council and modification of the project by the applicant to include an enclosure to the outdoor patio area and a request to have the Planning Commission reconsider the project. She reported that the applicant has submitted a revised application including a Use Permit, requesting their original operations allowing for patron dancing, a modified floor plan to remove a row of chairs after 10:00 p.m., extending the opening hour to 10:00 a.m. and the closing hour to 2:00 a.m., modifying the required parking and the use of valet parking. She addressed a request for a variance related to the proposed covered patio and encroachment of the cover to the bulkhead setback. She addressed surrounding properties and uses, history of the property and entitlements, previous approvals by the Planning Commission, denial of patron dancing, project-specific conditions of approval, the proposed enclosure of the



patio area, results of noise studies, resident concerns, findings and recommendations. She referenced recommended changes to the conditions distributed to the Commission.

Regarding the service of appetizers only after 10:00 p.m., Commissioner Brown wondered if that is consistent with similar uses in the area. Ms. Wisneski responded in the affirmative.

Discussion followed regarding the hours of operation for the adjacent business (American Junkie), defining valet parking "as needed" at the discretion of the business owner, minor corrections to the documents, impacts of noise to neighboring properties, consistency with the current operation of the interior allowing dining on the patio until 2:00 a.m., concurrence of the owner with the proposed changes, Type 47 liquor license, dance permit and operator license. It was noted that they do not have a dance permit but rather have a live entertainment permit.

Chair Hillgren opened the Public Hearing and invited the applicant forward for a presentation.

Mark Serventi, applicant, introduced his partners, attorney and consultants. He stated agreement with the staff report and all conditions of approval except for maintaining the seating arrangement on the patio and prohibiting patron dancing. He referenced a list of open issues and requested modification to some of the conditions of approval. He addressed a history of the property, trying to legitimize past operations, installation of curbs, closure of docks, investments in sound systems, sound checks, prior actions by the Planning Commission and amendments to their application. He addressed results of the noise study, the patio enclosure, the importance of patron dancing in operations and cover charges used as a screening tool. Mr. Serventi presented proposed changes to the conditions of approval and benefits of having a cover charge and summarized the request. He addressed valet parking and reported that the property owner is in favor of the application.

In response to an inquiry from Chair Hillgren, Mr. Serventi reported that no dancing would be allowed in the patio and that it would only be allowed inside.

Interested parties were invited to address the Commission on this matter.

Larry Edwards voiced support for the project with the inclusion of dancing. He commented positively on the operation.

Kent Stoddard urged the Commission to deny the application and listed past and current violations regarding dancing and use of the patio. He noted that the Police Department supports denial of the application and noted the resulting noise and increased crime in the area. He addressed the negative impacts of the operation to nearby residents.

Roger Diamond, Attorney for the applicant, commented on Mr. Stoddard's previous concerns regarding noise and his recommendation for a noise study, with which his client proceeded at great expense as well as the City's noise study and results. He stressed there is no noise problem and asked that the Commission respect the application and allow patron dancing as well as extended hours until 2:00 a.m.

In response to Chair Hillgren's inquiry, Mr. Diamond reported that his client does not concede that there have been violations in the past and felt this is not the appropriate forum to litigate that. He felt that the Commission should judge the project on its merits; is a legitimate business and deserves to be approved. He referenced additional permits needed and clarified that the approval of the application would allow Woody's to get the appropriate permits under which they have been operating.

Discussion followed regarding the operation's noncompliance with conditions.

Assistant City Attorney Mulvihill reported this is a different application than the one considered originally and that the public has the right to raise concerns as it sees fit. She reported it is not appropriate for her to comment on the status of prior violations but what is before the Commission is just the application.

Dennis Halloran stated that noise is one of the problems and impacts to nearby properties. He expressed concerns regarding a decreased quality of life because of the late-night element and spoke in opposition to the application. He urged the Commission to let it stay as a restaurant.

Joe Balzer spoke in support of the application noting the existence of nightlife and dancing in the area over time. He commented positively on the management of the operation and the benefits of "walk to" nightlife.

Norman Einhorn expressed concerns with the resulting noise and spoke in opposition to the application. He noted prior violations by the business and urged the Commission to deny the application.

Augustine Dillon spoke in support of the application and commented positively on allowing patron dancing.

James "Jamie" Duarte commented positively on the application and the operation. He reported that dancing has taken place over the history of the business and is a great restaurant. He urged the Commission to give them the ability to apply for a dancing permit and noted that American Junkie has a dancing permit.

Jim Mosher referenced last-minute changes to the conditions of approval and wondered if they have been made available to the public. He addressed the Conditional Use Permit and the role of the Commission to apply policy set by Council. He noted the findings needed for approval and the standard to be applied. He indicated opposition to the application. He addressed the variance of the ten (10) foot setback and the need to provide public access along the bay.

Tom Durant addressed the reduced quality of life due to changes in operations by Woody's Wharf. He indicated opposition to the application.

There being no others wishing to address the Commission, Chair Hillgren closed the Public Hearing.

Commissioner Myers wondered regarding the Commission's ability to approve the variance but not the changes to the conditional use. Ms. Wisneski responded in the affirmative.

Commissioner Kramer commented on the appropriateness of the solution to mitigate noise and addressed the issue of patron dancing and use of the patio. In response to his inquiry, Ms. Wisneski reported that changes related to the patio cover would not change the occupancy of the building so that restrooms would not be affected.

Discussion followed regarding deficiencies in the operator's public relations with nearby residents and the possibility of allowing patron dancing.

Ms. Mulvihill reported on the existing state of the citations noting that currently, dancing is not a permitted use. Staff has provided more information on the issue and Ms. Mulvihill stated that dancing is not a permitted use and that although dancing has occurred; it would be a new allowable use.

Outside Counsel Kyle Rowen noted that the issue of previous violations is not presently before the Commission but reported that the City has issued citations and there has been no final adjudication for any of the citations and presently, it should not be considered a factor in the current assessment. He noted that they currently have an entertainment permit in which dancing is prohibited.

Commissioner Brown commented on the prohibition of nightclubs in the zone and wondered whether Woody's is a restaurant or a nightclub. In response to his inquiry regarding the definition of a nightclub, Ms. Wisneski noted that the Zoning Code distinguishes between the two uses and the types of ABC licenses issued.

Commissioner Brown stated that for the purposes of considering the present application, Woody's is considered a restaurant.

Ms. Wisneski commented on compatibility with surrounding uses.

Discussion followed regarding permitted dancing at the operation next door to Woody's in a zone not permitted for late-night uses and nightclubs.

Ms. Wisneski reported that patron dancing does not equate to a nightclub, based on the Zoning Code, however, when the Planning Commission originally considered the Use Permit in November 2012, the denied patron dancing on the basis that it would contribute to a nightclub atmosphere.

Discussion followed regarding the dancing permit issued to the neighboring property, changes in the Zoning Code and the lack of enforcement, historically, regarding the issue of dancing related to Woody's.

Ensuing discussion followed regarding allowable uses for a restaurant compared to a nightclub, prior ABC investigations related to Woody's and consideration of the business as a restaurant. Discussion continued regarding compatibility with allowable uses in the vicinity and the operating characteristic of the business.

Commissioner Lawler reported that one of the issues is noise and that dancing does not create noise. He noted that dancing would be in the interior of the building and that there already is music in the interior until 2:00 a.m.

Commissioner Brown noted that dancing is permitted in a nearby location and that it should be considered in allowing dancing at Woody's.

Ms. Wisneski reported that staff's recommendation to deny patron dancing is consistent with the Planning Commission's findings made in November 2012.

Chair Hillgren commented on the mixed-use area, addressed compatible surrounding uses and felt that continuation of a use should not be considered on the basis of prior use, but rather whether or not is it compatible with the uses in the neighborhood.

Vice Chair Tucker commented on the noise issue and the need to comply with the Code. He referenced the results of the noise study and stated that to him, it is not an issue. The issue relates to the compatibility with surrounding allowed uses. He addressed updates to the General Plan and new policies and findings as relevant and not whether the adjacent property allows dancing or not. He agreed that the project should be evaluated on the merits, rather than on whether they have allowed dancing in the past or are in violation of any code.

Commissioner Ameri felt that if the operators can improve the service provided and still be within the law, then it should be approved. He reported that dancing will not add to the noise and didn't see a problem with allowing it. If it proves to be problematic, then it would be up to the Police Department to address.

In response to Commissioner Kramer's inquiry regarding a grandfathering provision, Ms. Mulvihill reported that their present permit specifically states no dancing. The subsequent permit they would apply for is issued by Revenue and is more of a revenue permit as opposed to a discretionary permit.

Discussion followed regarding the chances of success with the City in approving a dancing permit if the Commission approves it. Ms. Mulvihill stated that the approval would include site-specific provisions.

Mr. Rowen addressed issues related to enforcement and conditions that Woody's would have to meet prior to having a dancing permit issued to them. If the Commission were to allow dancing, it would not necessarily result in the issuance of a dancing permit by the City; they would still need to meet the requirements per the Municipal Code and amend their present live entertainment permit and obtain an appropriate Operator's License issued by the Police Department.

It was noted that regarding the operator's permit the City would provide notice that an action is being considered to surrounding property owners.

Chair Hillgren agreed with Vice Chair Tucker that the compatibility issue changed with the revised General Plan and the addition of residential uses in the area. He added that the noise issue has been resolved but stated that the fundamental use needs to be limited to weekends.

Commissioner Ameri stressed that it should be specifically stated that no dancing is allowed on the patio.

Chair Hillgren noted that it is specified that dancing would only be in the interior.

Discussion followed regarding incorporating changes proposed by the applicant and staff to the Conditions of Approval and specifically addressing Conditions 51 and 52.

Chair Hillgren noted that he did not agree with changes requested by the applicant regarding Condition 52. He clarified the intent of Condition 51, and modified the condition to delete the prohibition for door charge, but maintained the prohibition of minimum drink orders.

Vice Chair Tucker indicated he will not support the motion adding that it affects the quality of life in relation to the existing and future residential component.

**Motion** made by Chair Hillgren and seconded by Commissioner Ameri and carried (5 – 2), to adopt Resolution No.1922 approving Conditional Use Permit No. UP2011-010 and Variance No. VA2013-006, to allow the proposed patio cover to encroach into the bulkhead setback; extend the opening hour of the restaurant and outdoor dining area to 10:00 a.m., daily, and extend the closing hour of the outdoor dining area to 2:00 a.m., on weekends (Friday and Saturday nights); require the use of the valet parking on an as-needed basis only; and waiver of a portion of the required parking and allowing the introduction of patron dancing within the interior of the restaurant but denying the removal tables and chairs within the outdoor dining area on week nights (Sunday to Thursday nights).

AYES: Ameri, Brown, Hillgren, Kramer and Lawler  
NOES: Myers and Tucker

#### **VIII. STAFF AND COMMISSIONER ITEMS**

**ITEM NO. 6 MOTION FOR RECONSIDERATION - None**

**ITEM NO. 7 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT**

**Committee Updates:**

1. Land Use Element Amendment Advisory Committee
2. General Plan/Local Coastal Program Implementation Committee

Ms. Wisneski announced an upcoming special meeting of the Planning Commission on September 11, 2013, at 4:00 p.m. in conjunction with the Balboa Village Advisory Committee and the Urban Land Institute. Additionally, she announced that on Monday, September 9, 2013, at 6:00 p.m., there will be a public information meeting in the Community Room updating the community on the outcome and recommendations by the Land Use Element Amendment Advisory Committee. She reported that staff has been having discussions with Coastal Commission staff regarding Local Coastal Program Implementation.

Vice Chair Tucker addressed items for discussion on the General Plan/Local Coastal Program Implementation Committee's upcoming agenda.

Informal recommendations will be given to the Planning Commission at its meeting on September 19, 2013.

**ITEM NO. 8 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT - None**

**ITEM NO. 9 REQUESTS FOR EXCUSED ABSENCES**

Vice Chair Tucker requested an excused absence for the Planning Commission meeting of October 3, 2013.

Chair Hillgren noted that he will be absent for the Planning Commission meeting of September 19, 2013.

#### **IX. ADJOURNMENT**

There being no further business to come before the Planning Commission, the meeting was adjourned at 11:00 p.m.

The agenda for the Regular Meeting was posted on August 30, 2013, at 3:40 p.m., in the binder and on the City Hall Electronic Bulletin Board located in the entrance of the Council Chambers at 100 Civic Center Drive.

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Bradley Hillgren, Chair

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Kory Kramer, Secretary

DRAFT

Commissioner Brown noted that dancing is permitted in a nearby location and that it should be considered in allowing dancing at Woody's.

Ms. Wisneski reported that staff's recommendation to deny patron dancing is consistent with the Planning Commission's findings made in November 2012.

Chair Hillgren commented on the mixed-use area, addressed compatible surrounding uses and felt that continuation of a use should not be considered on the basis of prior use, but rather whether or not is it compatible with the uses in the neighborhood.

Vice Chair Tucker commented that a plan to reduce noise was not relevant since all projects are required on the noise issue and the need to comply with the Code with respect to noise. So he referenced the results of a the noise study projecting required compliance cannot be a basis to approve the Applicant's request and stated that to him, it is not an issue. The real issue before the Commission is relates to the compatibility of the proposed changes requested by the Applicant with surrounding allowed uses. He addressed the updates to the General Plan in 2006 which changed allowed uses in the vicinity. Specifically, Vice Chair Tucker read from Municipal Code Section 20.52.020 a finding the Commission must make in order to approve a modification to a conditional use permit: "The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity". Due to residential uses which are now allowed on the property to the south contiguous with the Applicant's property, the changes Applicant requests to its business would have to be found consistent with allowed uses in the vicinity. He noted that while the use of the adjoining property to the north for dancing had some relevance, the contiguous property to the south under development would have many residential units so it might not be a good idea to allow dancing at Applicant's because it could result in some patrons having too much to drink and leaving the Applicant's business at 2:00 in an area with residential uses and new policies and findings as relevant and not whether the adjacent property allows dancing or not. He agreed that the project should be evaluated on the merits, rather than on whether Applicant in the past they had ve allowed dancing in the past or was are in violation of any permit requirement code. Accordingly, Vice Chair Tucker reiterated that in order to vote in favor of Applicant's request to allow dancing a finding of compatibility would need to be made.

Commissioner Ameri felt that if the operators can improve the service provided and still be within the law, then it should be approved. He reported that dancing will not add to the noise and didn't see a problem with allowing it. If it proves to be problematic, then it would be up to the Police Department to address.

In response to Commissioner Kramer's inquiry regarding a grandfathering provision, Ms. Mulvihill reported that their present permit specifically states no dancing. The subsequent permit they would apply for is issued by Revenue and is more of a revenue permit as opposed to a discretionary permit.

Discussion followed regarding the chances of success with the City in approving a dancing permit if the Commission approves it. Ms. Mulvihill stated that the approval would include site-specific provisions.

Mr. Rowen addressed issues related to enforcement and conditions that Woody's would have to meet prior to having a dancing permit issued to them. If the Commission were to allow dancing, it would not necessarily result in the issuance of a dancing permit by the City; they would still need to meet the requirements per the Municipal Code and amend their present live entertainment permit and obtain an appropriate Operator's License issued by the Police Department.

It was noted that regarding the operator's permit the City would provide notice that an action is being considered to surrounding property owners.

Chair Hillgren agreed with Vice Chair Tucker that the compatibility issue changed with the revised General Plan and the addition of residential uses in the area. He added that the noise issue has been resolved but stated that the fundamental use needs to be limited to weekends.

Commissioner Ameri stressed that it should be specifically stated that no dancing is allowed on the patio.

Chair Hillgren noted that it is specified that dancing would only be in the interior.

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Chair Hillgren noted that he did not agree with changes requested by the applicant regarding Condition 52. He clarified the intent of Condition 51, and modified the condition to delete the prohibition for door charge, but maintained the prohibition of minimum drink orders.

Vice Chair Tucker indicated he will not support the motion adding that it affects the quality of life in relation to the existing and future residential component [and the required compatibility finding cannot be made](#).

**Motion** made by Chair Hillgren and seconded by Commissioner Ameri and carried (5 – 2), to adopt Resolution No.1922 approving Conditional Use Permit No. UP2011-010 and Variance No. VA2013-006, to allow the proposed patio cover to encroach into the bulkhead setback; extend the opening hour of the restaurant and outdoor dining area to 10:00 a.m., daily, and extend the closing hour of the outdoor dining area to 2:00 a.m., on weekends (Friday and Saturday nights); require the use of the valet parking on an as-needed basis only; and waiver of a portion of the required parking and allowing the introduction of patron dancing within the interior of the restaurant but denying the removal tables and chairs within the outdoor dining area on week nights (Sunday to Thursday nights).

AYES: Ameri, Brown, Hillgren, Kramer and Lawler  
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#### **IX. ADJOURNMENT**